

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 20 1999

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DANIEL BAZEZA MAZUN,

Defendant-Appellant.

No. 98-1394
(D.C. No. 96-CR-208-N)
(Colorado)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **BALDOCK** and **HENRY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, or collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Daniel Bazeza Mazun filed in the district court a pro se Motion for Order to Produce the Grand Jury Material after his conviction was affirmed on appeal. *See United States v Mazun*, No. 97-1086, 1998 WL 438489 (10th Cir. filed July 14, 1998). The district court summarily denied the motion and Mr. Mazun appeals. For the reasons set out below, we affirm.¹

During Mr. Mazun's criminal trial, the district court granted his motion for disclosure of grand jury testimony. To protect the secrecy of the grand jury materials, the district court ordered Mr. Mazun's defense counsel to make only such copies of the materials as were necessary to prepare a defense and to return all copies to the Government at the conclusion of the case.

In his post-trial motion for production of grand jury matters, Mr. Mazun asserted that he has "a good faith basis for believing the requested material could prove that some defect may have occurred and that such defect would have a mitigation [sic] impact in his case." Rec, vol I, doc. 200 at 3. The district court denied Mr. Mazun's motion, stating that "defendant has demonstrated no particularized need for the material requested and that, contrary to his assertion, his motion amounts to a fishing expedition." *Id.* at doc 201.

We review the denial of a request for disclosure of grand jury material under an abuse of discretion standard. *See In re Grand Jury 95-1*, 188 F.3d 1433,

¹ We grant the government's motion to supplement the record on appeal.

1437 (10th Cir. 1997); *In re Lynde*, 922 F.2d 1448, 1451 (10th Cir. 1991). We set out the stringent standards for the disclosure of such materials in *Grand Jury 95-1*:

The prerequisites for disclosure of grand jury materials are demanding. *See Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 222, 99 S. Ct. 1667, 1674, 60 L.Ed.2d 156 (1979) (outlining standard for determining whether grand jury secrecy should be breached). Specifically, a party seeking grand jury materials must show (1) the materials are needed to avoid a possible injustice in another judicial proceeding, (2) the need for disclosure is greater than the need for continued secrecy, and (3) the request is structured to cover only material so needed. *Lynde*, 922 F.2d at 1452; *see also In Re Eyecare Physicians of America*, 100 F.3d 514, 518 (7th Cir. 1996). Relevance alone is not sufficient; secrecy will not be broken absent a compelling necessity for the materials. *Eyecare*, 100 F.3d at 518 (citing *Hernly v. United States*, 832 F.2d 980, 983-84 (7th Cir. 1987)). Further, the request must amount to more ““than a request for authorization to engage in a fishing expedition.”” *Id.* (quoting *Lucas v. Turner*, 725 F.2d 1095, 1101 (7th Cir. 1984)).

Id. at 1437.

We agree with the district court that Mr. Mazun has not met the standard for disclosure of grand jury matters. The court did not abuse its discretion in denying the motion.

The decision of the district court is **AFFIRMED**.

ENTERED FOR THE COURT

Stephanie K. Seymour
Chief Judge